

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0394
)	
)	NAL/Acct. No. 200532080143
BCE Nexxia Corporation)	
)	FRN No. 0008-2783-76

ORDER

Adopted: December 12, 2008

Released: December 15, 2008

By the Commission:

1. In this Order, we adopt the attached Consent Decree entered into between the Federal Communications Commission (“Commission”) and BCE Nexxia Corporation (“BCE”). The Consent Decree terminates an investigation and Notice of Apparent Liability for Forfeiture (“NAL”) by the Commission against BCE for possible violations of sections 9, 214, and 254 of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. §§ 159, 214, 254, sections 34-39 of the Cable Landing Act, 47 U.S.C. §§ 34-39, Executive Order No. 10530, and sections 1.767, 1.1154, 1.1156, 43.61, 43.82, 54.706, 54.711, 63.10, and 63.11 of the Commission’s rules, 47 C.F.R. §§ 1.767, 1.1154, 1.1156, 43.61, 43.82, 54.706, 54.711, 63.10, and 63.11, regarding violation of the universal service reporting and contribution requirements, as well as international reporting and fee payment requirements.

2. The Commission and BCE have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, which terminates the investigation and cancels the NAL.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether BCE possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,¹ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

¹ 47 U.S.C. § 154(i), 503(b).

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Joel S. Winnik, Counsel for BCE, Columbia Square, 555 Thirteenth Street, NW, Washington D.C., 20004.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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CONSENT DECREE

1. The Federal Communications Commission (“Commission” or “FCC”) and BCE Nexxia Corporation (“BCE” or the “Company”) (as defined in para 2(c) hereof), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Commission’s investigation into whether BCE violated sections 9, 214 and 254 of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. §§ 159, 214, 254, sections 34-39 of the Cable Landing Act, 47 U.S.C. §§ 34-39, Executive Order No. 10530, and sections 1.767, 1.1154, 1.1156, 43.61, 43.82, 54.706, 54.711, 63.10, and 63.11 of the Commission’s rules, 47 C.F.R. §§ 1.767, 1.1154, 1.1156, 43.61, 43.82, 54.706, 54.711, 63.10, and 63.11, regarding violation of the universal service reporting and contribution requirements, as well as international reporting and fee payment requirements.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) “BCE” or “the Company” means BCE Nexxia Corporation, BCE Nexxia Voice Services Corporation, Marine Cable Corporation and their predecessors-in-interest and successors-in-interest, collectively.
- (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
- (g) “Effective Date” means the date on which the Commission releases the Adopting Order.

- (h) “Investigation” means the investigation commenced by the Bureau’s September 8, 2004 Letter of Inquiry¹ regarding whether BCE Nexxia Corporation violated the universal service reporting and contribution requirements of Section 254 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 254, and of sections 54.706 and 54.711 of the Commission’s rules, 47 C.F.R. §§ 54.706 and 54.711. It also includes the BCE self-disclosure with regard to compliance with section 9 and 214 of the Act, 47 U.S.C. §§ 159, 214, and of sections 34-39 of the Cable Landing Act, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, and sections 1.767, 1.1154, 1.1156, 43.61, 43.82, 63.10, and 63.11 of the Commission’s Rules, 47 C.F.R. §§ 1.767, 1.1154, 1.1156, 43.61, 43.82, 63.10, and 63.11, regarding violation of the universal service reporting and contribution requirements, as well as international reporting and fee payment requirements
- (i) “NAL” means Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 15121 (2005).
- (j) “Parties” means BCE and the Commission.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. On September 13, 2005, the Commission issued a Notice of Apparent Liability for Forfeiture (“NAL”)² proposing that BCE be held liable for a forfeiture of \$282,000 for apparent violations of section 254 of the Act and sections 54.711(a) and 54.706(a) of the Commission’s Rules by willfully and repeatedly failing to submit certain Telecommunications Reporting Worksheets and by failing to contribute to the Universal Service Fund (“USF”). In response, BCE requested that the Commission consider settling the investigation with a consent agreement prior to issuing a forfeiture order. During the course of the settlement discussions, BCE voluntarily disclosed several other potential violations of the Act and the Commission’s rules involving Submarine Cable Landing License Reports, International Bearer Circuit Fees, International Carrier Traffic and Revenue Reports, International Circuit Status Reports, and Foreign Carrier Affiliation Notification and proposed that the new self-disclosed violations be settled in the same consent agreement. As of the Effective Date, BCE has paid all invoiced amounts to the Universal Service Fund, Telecommunications Relay Service Fund, cost recovery mechanisms for the North American Numbering Plan administration, and regulatory fees, as well as complied with the other regulatory obligations noted above.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Commission by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

¹ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to David C. Kidd, Vice President, Regulatory Law, BCE Nexxia Corporation, dated September 8, 2004 (September 8, 2004 LOI).

² *BCE Nexxia Corporation*, Notice of Apparent Liability, 20 FCC Rcd 15121 (2005).

5. **Jurisdiction.** BCE agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate its investigation and to cancel its NAL. In consideration for the termination of said investigation and cancellation of the NAL, BCE agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that in the absence of new material evidence, the Commission will not use the facts developed in this investigation including information voluntarily disclosed by BCE, through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against BCE concerning the matters that were the subject of the investigation. The Commission also agrees that it will not use the facts developed in this investigation including information voluntarily disclosed by BCE, through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against BCE with respect to BCE's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, BCE agrees to create within sixty (60) calendar days a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **Compliance Manual.** BCE shall create, maintain and update an FCC Compliance Manual. BCE personnel who engage in activities related to FCC regulation of BCE will have ready access to the Compliance Manual and are to follow the procedures contained therein. The Compliance Manual will, among other things, describe the rules and requirements as they apply to BCE regarding international bearer circuit fees, annual regulatory fees, the Universal Service Fund, the Telecommunications Relay Service Fund, and the North American Numbering Plan administration cost recovery fund, as well as the filing of Submarine Cable Landing License Reports, International Carrier Traffic and Revenue Reports, International Circuit Status Reports, and Foreign Carrier Affiliation Notifications. The Compliance Manual will set forth a schedule of filing and payment dates associated with these regulatory programs, and BCE will create compliance notifications that alert BCE to upcoming filing and payment dates. The Compliance Manual will encourage personnel to contact BCE's Designated Contact, Regulatory Legal Counsel, Regulatory Services Advisors, and/or Mirko Bibic, Vice President, Regulatory Matters, with any questions or concerns that arise with respect to BCE's FCC compliance. BCE shall submit to the Bureau a final version of its Compliance Manual sixty (60) days after the Effective Date.
- (b) **Compliance Training Program.** BCE will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of

BCE. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies and, for new employees who are engaged in such activities, within the first sixty (60) days of employment.

- (c) Designated Contact. BCE will designate Mirko Bibic, Vice President Regulatory Matters as the point of contact for all FCC compliance matters.
- (d) Review and Monitoring. BCE will review the FCC Compliance Manual and FCC Compliance Training Program annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (e) Termination. BCE's obligations under this Paragraph shall expire twenty-four (24) months after the Effective Date.

9. **Compliance Reports.** BCE will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of BCE, stating that the officer has personal knowledge that BCE has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Hillary S. DeNigro, Chief, Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The compliance reports shall also be submitted electronically to hillary.denigro@fcc.gov.

10. **Voluntary Contribution.** BCE agrees that it will make a voluntary contribution to the United States Treasury in the amount of three hundred and twenty five thousand dollars (\$325,000) with payment to be made within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. BCE will also send electronic notification to elizabeth.mumaw@fcc.gov and trent.harkrader@fcc.gov within forty-eight (48) hours of the date said payment is made.

11. **Waivers.** BCE waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues the Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. BCE shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither BCE nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and BCE shall waive any statutory right to a trial *de novo*. BCE hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Adopting Order (except an Order specifically intended to

revise the terms of this Consent Decree to which BCE does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** BCE agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Marlene H. Dortch
Secretary
Federal Communications Commission

Date

Mirko Bibic
Vice President, Regulatory Matters
BCE Nexxia Corporation, BCE Nexxia Voice
Services Corporation and Marine Cable
Corporation

Date